

Circuit Court for Baltimore City
Case Nos.: 207255049, 050, 051

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 590

September Term, 2020

BOISEY NEAL

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 5, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On March 10, 2009, pursuant to a binding guilty plea agreement, appellant, Boisey Neal, pleaded guilty, in the Circuit Court for Baltimore City, to three counts of robbery with a deadly or dangerous weapon, and one count of use of a handgun in the commission of a crime of violence. In accordance with the terms of the plea agreement, the court sentenced appellant to three concurrent 10-year terms of imprisonment on the robbery counts, and a concurrent 5-year term of imprisonment on the weapons offense, for a combined total of 10 years' imprisonment. At the time, appellant was already serving sentences, which we will discuss more fully later, previously imposed in Anne Arundel County and Baltimore County.

On January 27, 2020 and April 24, 2020, appellant filed motions in the circuit court aimed at correcting the start date of his Baltimore City sentence. The circuit court consolidated those motions and denied them in a written memorandum filed on July 20, 2020. Appellant took an appeal from that denial. For the reasons stated below, we shall affirm.

BACKGROUND

On March 28, 2008, appellant was sentenced, in the Circuit Court for Anne Arundel County, to 15 years' imprisonment. The court awarded appellant with 288 days of credit for time-served on this sentence.

On or about October 10, 2008, the Circuit Court for Baltimore County sentenced appellant to a 2 years' imprisonment for a violation of probation. The court imposed this sentence consecutive to the Anne Arundel County sentence.

On March 10, 2009, when appellant pleaded guilty and was sentenced in Baltimore City, the guilty plea agreement contemplated that the sentence would be consecutive to the 15-year Anne Arundel County sentence, but concurrent to the 2-year Baltimore County sentence, for a collective total of 25 years' imprisonment. However, when the court pronounced the Baltimore City sentence, it erroneously said that it would be imposed consecutive to all other sentences, making appellant's total sentence 27 years.

That error got straightened out on December 20, 2019, when, upon the motion of both the State and appellant, the circuit court re-sentenced appellant making it clear that the 10-year sentence from Baltimore City was consecutive only to the 15-year Anne Arundel County sentence – for a collective total of 25 years.

Appellant thereafter filed a *pro se* pleading entitled “Credit For All Time Spent in Custody for Illegal Sentence (Set Aside),” and a follow-up pleading entitled “Motion to Request Credit Under Maryland Code Criminal Procedure § 6-218 – Credit Against Sentence For Time Spent In Custody And Federal Criminal Law § 32 Double-Jeopardy Retrial-Resentencing-Credit For Time Served.”

The gist of those pleadings is that, according to appellant, because he had allegedly already served his 15-year Anne Arundel County sentence (after application of diminution of confinement credits) by the time he was re-sentenced on December 20, 2019, there was no sentence in existence to run the 10-year Baltimore City sentence consecutive to and therefore, the 10-year Baltimore City sentence began to run on October 18, 2006.¹

¹ Appellant alleges that he was arrested in North Carolina on that date.

Therefore, according to appellant, he was entitled to have the 10 years and 9 months he had allegedly served on the Baltimore City sentence credited towards it, which meant that he would be entitled to be released from custody, having already served the full sentence. Appellant based his position on provisions of the United States Constitution, including the prohibition against double jeopardy and the right to due process.

The circuit court denied appellant's motions for several reasons. First, the court determined that a re-sentencing does not offend double jeopardy principles, particularly, where, as here, the re-sentencing results in a decreased sentence. Second, the court determined that, while appellant asserted that he had completed his 15-year Anne Arundel County sentence by the time of the resentencing on his 10-year Baltimore City sentence, he provided no evidence to support that assertion. Last, the court ruled that, even if appellant had shown that he had completed his 15-year Anne Arundel County sentence by the time of the re-sentencing, he still would not be entitled to the relief he seeks because it was always contemplated that the 10-year Baltimore City sentence would be consecutive to the 15-year Anne Arundel County sentence, and to accept appellant's contention would effectively make those sentences concurrent, which was "never the intent of the parties and nothing about the timing of his re-sentencing changes that fact."

DISCUSSION

In appellant's *pro se* briefs in this Court he does not address the circuit court's ruling. He merely reiterates the argument he made below and points to various errors in the State's brief. As such he offers no explanation of how or why the circuit court's ruling is incorrect. Upon our own independent review of the record, we discern no error or abuse

of discretion on the part of the circuit court. It is undisputed that appellant bargained for, and received, an aggregate sentence of 25 years' imprisonment. Nothing about his re-sentencing, which was done to correct an erroneous 2-year increase beyond what was bargained for, changes that fact.

Consequently, we shall affirm the judgment of the circuit court.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID
BY APPELLANT.**